

RECEIPT # _____
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 DATE 6-10-04

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

FILED
 IN CLERKS OFFICE

2004 JUN 10 P 2:02

MIGUEL A. CINTRON,

Plaintiff,

v.

PETER V. MCLOUGHLIN,
 and SYSTEMS MARKETING, INC.

Defendants.

U.S. DISTRICT COURT
 DISTRICT OF MASS.

CIVIL ACTION NO. _____

04 - 11293 REK

MAGISTRATE JUDGE Bowler

COMPLAINT AND JURY DEMAND

I. INTRODUCTION

Plaintiff Miguel A. Cintron brings this action for damages, imposition of a constructive trust, and an accounting arising out of the breach of a partnership agreement with Defendant Peter McLoughlin. Defendant Peter McLoughlin has failed or refused to report to and pay Plaintiff Miguel Cintron any amounts from their joint venture project, despite Plaintiff's work on behalf of and dedication to the partnership.

II. PARTIES

1. Plaintiff Miguel A. Cintron is an individual residing in Winchester, Massachusetts.
2. Defendant Peter V. McLoughlin is an individual, upon information and belief, residing at 75 Old Post Road, Southport, Connecticut.
3. Defendant Systems Marketing, Inc. is a Connecticut corporation with a principal place of business, upon information and belief, located in Southport,

Connecticut. Upon information and belief, Defendant Peter McLoughlin is the sole owner and operates the business of Systems Marketing, Inc.

III. JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a), as the parties are citizens of diverse states and the amount in controversy exceeds the sum of \$75,000.00. Venue is proper in this judicial district according to 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims occurred in this judicial district.

IV. FACTUAL ALLEGATIONS

5. Plaintiff Miguel A. Cintron ("Mr. Cintron") has broad and expansive experience and expertise as a computer consultant. Mr. Cintron has been engaged in the business of providing independent consulting services in the information technology sector for many years. Mr. Cintron has an expertise in computer programming, and in the design, development, and implementation of specialized computer applications.

6. Defendant Peter McLoughlin ("McLoughlin") is engaged in sales of computer components. McLoughlin sells computer components through the company called Systems Marketing, Inc., which is owned and operated by McLoughlin.

7. In or about April 2002, Mr. Cintron and McLoughlin, individually or through Systems Marketing, Inc., agreed to enter into a joint venture together for the purpose of developing and marketing for sale a specialized computer application (hereinafter the "Partnership" or "Partnership Agreement").

8. Mr. Cintron and McLoughlin agreed that the purpose of the Partnership was to work jointly to design, implement, and market a computer application to permit

high-volume direct e-mail advertising for targeted markets (hereinafter referred to as the “Project”).

9. Mr. Cintron and McLoughlin agreed, that Mr. Cintron would provide system design and development expertise to and in furtherance of the Project on behalf of the Partnership. Mr. Cintron’s investment in the Partnership was his experience and expertise in developing and implementing specialized computer applications.

10. Mr. Cintron and McLoughlin agreed, as Partners, that McLoughlin would provide the computer hardware equipment and monetary investment for and in furtherance of the Project on behalf of the Partnership. McLoughlin’s investment in the Partnership was money and equipment.

11. Mr. Cintron and McLoughlin agreed, as Partners, that they would share equally in all net profits derived from the Project under the Partnership Agreement.

12. McLoughlin sent e-mail communications and telephone communications from Connecticut into Massachusetts for the purpose of inducing Mr. Cintron to enter into the Partnership Agreement, and to induce Mr. Cintron perform services to and for the benefit of the Project.

13. McLoughlin communicated the terms of the Partnership Agreement to Mr. Cintron in Massachusetts by way of e-mail communications and telephone communications.

14. The Partnership Agreement was consummated in Massachusetts.

15. The Partnership Agreement between McLoughlin and Mr. Cintron is governed by Massachusetts law.

16. In reliance on the Partnership Agreement, Mr. Cintron invested significant time, energy, and resources to and on behalf of the Project for over twelve months.

17. In reliance on the Partnership Agreement between the parties, Mr. Cintron performed services to and on behalf of the Project.

18. In furtherance of the Project and on behalf of the Partnership, Mr. Cintron identified and retained computer programmers to design and develop computer software for the Project; configured computers and implemented hardware systems; managed software developers and designers; and engaged in other services to develop and implement the Project on behalf of the Partnership.

19. Mr. Cintron engaged in all of the services in furtherance of the Partnership Agreement and for the benefit of the Project in Massachusetts.

20. In accordance with the Partnership Agreement, McLoughlin provided computer hardware components and cash investment for the Project.

21. Mr. Cintron fully and completely complied with the Partnership Agreement, and expended significant time and energy in furtherance of the Project for the benefit of the Partnership.

22. McLoughlin, upon informing and belief, received on behalf of the Partnership gross payment for work performed on the Project of approximately \$17,995.00 per month beginning in or about April 2002.

23. McLoughlin never paid Mr. Cintron any amounts for work Mr. Cintron performed on the Project, or any amounts received by McLoughlin for the Project.

24. Mr. Cintron performed services on the Project and on behalf of the Partnership in reliance on the promise of payment by McLoughlin.

25. In or about May 2003, McLoughlin announced to Mr. Cintron that McLoughlin would not comply with the Partnership Agreement, would not pay Mr. Cintron any monies derived from the Project, and was unilaterally altering the terms of the Partnership Agreement. McLoughlin made these statements to Mr. Cintron via e-mail communications sent to Mr. Cintron in Massachusetts. A true and accurate copy of e-mail communications from McLoughlin sent into Massachusetts to Mr. Cintron are attached hereto at Exhibit 1.

26. Mr. Cintron, as a Partner, is entitled to receive one-half of the net profit earned from the Project.

27. McLoughlin has retained for his own personal benefit all of the profits received from monies paid on account of the Project since April 2002.

28. McLoughlin has failed or refused to pay Mr. Cintron profit derived from the Project, as required by the Partnership Agreement.

29. McLoughlin has failed or refused to provide Mr. Cintron an accounting of all partnership profits.

30. Upon information and belief, Mr. Cintron is entitled to receive in excess of \$75,000.00 as his share of the net profits derived from the Project pursuant to the Partnership Agreement.

31. McLoughlin has taken control over the assets of the Partnership, for his own personal benefit to the exclusion of Mr. Cintron, in violation of the Partnership Agreement and in breach of his fiduciary duty as a partner.

32. Mr. Cintron has sustained monetary damage as a direct and proximate result of McLoughlin's failure to comply with the Partnership Agreement and his breach of his fiduciary duty as a Partner with Mr. Cintron.

IV. CAUSES OF ACTION

COUNT I (Breach of Fiduciary Duty)

33. Plaintiff repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 32 as if each were fully set forth herein.

34. As a partner and joint venturer in connection with the Project, McLoughlin owed Mr. Cintron a fiduciary duty of loyalty with respect to their Partnership and joint venture enterprise.

35. By his actions described above, and as will be further proven at trial, McLoughlin breached his fiduciary duty of loyalty to Mr. Cintron.

36. Mr. Cintron has suffered damages, including monetary loss, as a direct and proximate result of the breach of fiduciary duty by McLoughlin, in an amount to be determined at trial.

37. Mr. Cintron is entitled to an award of damages against McLoughlin, an accounting of all Partnership assets, and other relief this Court deems just and proper.

COUNT II (Breach of Contract)

38. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 37 as if each were fully set forth herein.

39. For good and valuable consideration, McLoughlin entered into the Partnership Agreement with Mr. Cintron.

40. Mr. Cintron fully complied with and performed his obligations under the Partnership Agreement.

41. McLoughlin breached the Partnership Agreement with Mr. Cintron.

42. Mr. Cintron has sustained damages as a direct and proximate result of the breach of the Partnership Agreement by McLoughlin, in an amount to be determined at trial.

COUNT III
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

43. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 42 as if each were fully set forth herein.

44. McLoughlin had an implied duty to deal with Mr. Cintron fairly and in good faith under the Partnership Agreement.

45. McLoughlin breached the implied covenant of good faith and fair dealing inherent in the contractual relationship with Mr. Cintron.

46. Mr. Cintron sustained damage as a direct and proximate result of the breach of the implied covenant of good faith and fair dealing by McLoughlin.

COUNT IV
(Unjust Enrichment)

47. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 46 as if each were fully set forth herein.

48. McLoughlin benefited by the contributions and services rendered by Mr. Cintron to and for the benefit of the Partnership and the Project.

49. McLoughlin has been unjustly enriched at the expense of Mr. Cintron.

50. Mr. Cintron is entitled to recover from McLoughlin an amount of money for which McLoughlin has been unjustly enriched, in an amount to be determined at trial.

COUNT V
(Quantum Meruit)

51. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 50 as if each were fully set forth herein.

52. Mr. Cintron rendered valuable services to and for the benefit of the Partnership and the Project.

53. McLoughlin accepted the benefit of the valuable services rendered by Mr. Cintron.

54. McLoughlin personally benefited from the valuable services rendered by Mr. Cintron.

55. McLoughlin accepted the benefit of the services rendered by Mr. Cintron with knowledge that Mr. Cintron expected payment for the services rendered to and on behalf of the Project.

56. Mr. Cintron has received no payment from McLoughlin for the valuable services Mr. Cintron rendered to and on behalf of the Project.

57. Mr. Cintron is entitled to recover from McLoughlin the reasonable value of services rendered to the Project, in an amount to be determined at trial.

COUNT VI
(Promissory Estoppel)

58. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 57 as if each were fully set forth herein.

59. McLoughlin promised to pay Mr. Cintron one-half of the profits derived from the Project to induce Mr. Cintron to render valuable services to and for the benefit of the Project.

60. Mr. Cintron reasonably relied upon the promises made by McLoughlin, and rendered valuable services to the Project in reliance on the promises of McLoughlin.

61. Mr. Cintron relied, to his detriment, on the promises made by McLoughlin.

62. McLoughlin breached the promises made to Mr. Cintron by failing or refusing to pay Mr. Cintron one-half of profits derived from the Project.

63. As a direct and proximate result of the breach of the promises by McLoughlin, Mr. Cintron has suffered damage in an amount to be determined at trial.

64. McLoughlin is estopped from refusing to comply with the promise to pay Mr. Cintron one-half of the profit from the Project.

**COUNT VII
(Deceit)**

65. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 64 as if each were fully set forth herein.

66. McLoughlin represented to Mr. Cintron that he would be paid one-half of the net profits from the Project as equal partner in the Partnership in return for Mr. Cintron providing valuable services to the Project.

67. McLoughlin falsely represented to Mr. Cintron that he was entitled to a one-half interest in the Partnership.

68. McLoughlin made the statements of fact to Mr. Cintron to induce Mr. Cintron to render valuable services to the Project.

69. McLoughlin knew the representations made to Mr. Cintron about the Partnership and the Project were false when made, and McLoughlin did not intend to pay Mr. Cintron.

70. Mr. Cintron reasonably relied upon the representations of McLoughlin, and Mr. Cintron rendered valuable services to the Project to the detriment of Mr. Cintron.

71. As a direct and proximate result of the misrepresentations of fact by McLoughlin, Mr. Cintron has sustained and continues to sustain damages, in an amount to be determined at trial.

COUNT VIII
(Negligent Misrepresentation)

72. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 71 as if each were fully set forth herein.

73. McLoughlin represented to Mr. Cintron that he would be paid one-half of the net profits from the Project as equal partner in return for Mr. Cintron providing valuable services to the Project.

74. McLoughlin falsely represented to Mr. Cintron that he was entitled to a one-half interest in the Partnership.

75. McLoughlin made the statements of fact to Mr. Cintron to induce Mr. Cintron to render valuable services to the Project.

76. McLoughlin knew or in the exercise of due care should have known the representations made to Mr. Cintron about the Partnership and the Project were false when made.

77. Mr. Cintron reasonably relied upon the representations of McLoughlin, and Mr. Cintron rendered valuable services to the Project to the detriment of Mr. Cintron.

78. As a direct and proximate result of the misrepresentations of fact by McLoughlin, Mr. Cintron has sustained and continues to sustain damages, in an amount to be determined at trial.

COUNT IX
(Action for An Accounting)

79. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 78 as if each were fully set forth herein.

80. Mr. Cintron is entitled to a full and complete account from McLoughlin of all Partnership assets, including, but not limited to, all amounts received by McLoughlin from the Project.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Miguel Cintron requests this Honorable Court to:

1. Enter judgment in his favor against McLoughlin on all Counts;
2. Award him damages against McLoughlin in an amount to be determined at trial;
3. Order the imposition of a constructive trust over all assets of the Partnership, including, but not limited to, all monies derived from the Project, and to order prohibit McLoughlin to refrain from dissipating or disposing of Partnership assets, including money derived from the Project;
4. Order McLoughlin to account for all Partnership assets, including, but not limited to, all monies or benefits received on account of the Project;
5. Enter an order requiring McLoughlin to comply with the terms and conditions of the Partnership Agreement with respect to the Project;
6. Award him attorneys' fees and costs in bringing this action; and


7. Grant such other and further relief deemed just and proper.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL
CLAIMS SO PERMITTED.**

Respectfully submitted,

MIGUEL A. CINTRON

By his attorneys,



Peter F. Carr, II (BBO #600069)
ECKERT SEAMANS CHERIN & MELLOTT, LLC
One International Place, 18th Floor
Boston, MA 02110
617.342.6800
617.342.6899 (FAX)

DATED: June 10, 2004

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Miguel A. Cintron

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Peter V. McLoughlin and Systems Marketing, Inc.

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Peter F. Carr, II 617.342.6800
Eckert Seamans Cherin & Mellott, LLC
One International Place, 18th Floor, Boston

Attorneys (If Known)

04-11293 REK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF 4
- Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff brings diversity action under 28 U.S.C., section 1332 for breach of partnership, breach of contract, and breach of fiduciary duty.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6-10-04

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERKS OFFICE1. Title of case (name of first party on each side only) Miguel A. Cintron v. Peter McLoughlin

2004 JUN 10 P 2:02

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

U.S. DISTRICT COURT
DISTRICT OF MASS.☐

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☐

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases☒

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐

V. 150, 152, 153.

04-11293 REK

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Peter F. Carr, II
Eckert Seamans Cherin & Mellott, LLCADDRESS One International Place, 18th Floor, Boston, MA 02110TELEPHONE NO. 617.342.6800